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Docket No.: 105773.0132

(PATENT)

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OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:
Dante E. PICCONE

Original Patent No.: 5,614,737

Patent No.: RE36770

Original Issue Date: March 25, 1997

Reissued: July 11, 2000

Application No.: 09/273,567

For: MOS-CONTROLLED HIGH-POWER
THYRISTOR

Filed: March 22, 1999

PETITION FOR RECONSIDERATION UNDER 37 C.F.R. § 1.378(B)

Attention: Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The present Petition for Reconsideration is filed in response to the Decision on Petition mailed December 8, 2008 (hereinafter referred to as the "PTO Decision"). A copy of the Decision is attached hereto. The Petitioner respectfully requests reconsideration in light of the additional information provided herein, which shows that the Petitioner exercised the standard of care observed by a reasonable person in the conduct of that person's most important business and that the delay in paying the maintenance fee was therefore unavoidable. The undersigned hereby authorizes and requests the Office to charge the required petition fee of \$400.00 under 37 CFR 1.17(h) to Deposit Account No. 23-2185.

The PTO Decision denied the Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent, which was filed September 25, 2008 (hereinafter referred to as "Petition"). The PTO Decision was based on the following reasons: (1) that the Petition

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failed to attribute the error to any employee in particular; (2) that the Petition only had sparse details; (3) that a statement is required from all persons with direct knowledge; and (4) that the Petition does not explain why the firm hadn't noticed why the patent had been expired for six years. (See PTO Decision, pp. 4-5.) A detailed response is provided below. In addition, a Statement by Andrew Yost is being filed herewith in support of the present Petition for Reconsideration (hereinafter referred to as "Reconsideration Statement").

Issue 1: Failure to Identify a Particular Person

The PTO Decision indicates that the Petition failed to attribute the error to any employee in particular. (See PTO Decision, p. 4.) As stated in the current Reconsideration Statement, the firm's Docketing Manager at the time was Lynda Bynum-Cosby. (See Reconsideration Statement, ¶8.) Ms. Cosby had been with the firm for one year at that time, and had five years of previous docketing and supervisory experience, and an additional three years of experience as an IP Specialist. (See Reconsideration Statement, ¶8.) Accordingly, reliance on Ms. Cosby represented the exercise of due care.

Issue 2: Comprehensive and Exhaustive Evidence

The PTO Decision indicates that any renewed petition must be accompanied by comprehensive and exhaustive evidence that a clerical error resulted in the unavoidable delay in paying the 3.5-year maintenance fee. The Reconsideration Statement provides additional detail that supports the inevitable conclusion that the delay was due to clerical error, as well as that the delay was unavoidable as a result of that clerical error. (See Reconsideration Statement, ¶21.)

Issue 3: Statement Required from All Persons with Direct Knowledge

The PTO Decision indicates that a statement is required from employee charged with handling the payment of the maintenance fee, who has first-hand knowledge of the

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circumstances that resulted in the delay. (See PTO Decision, p. 4.) The Reconsideration Statement submitted with this Request for Reconsideration is by Mr. Andrew Yost. Though Mr. Yost was not employed by the firm at the time of the facts, he has reviewed the relevant documents and information entered into the firm's docketing software. Accordingly, his statement is made on the direct knowledge obtained from those documents, such as the docket record for the patent at issue, a copy of which was attached to his prior statement. (See prior Statement dated Sept. 25, 2008, ¶10.) It is noted, however, that although Ms. Cosby was employed by the firm for about 7.5 years, she is no longer employed by the firm. (See Reconsideration Statement, ¶8.)

Issue 4: Not Discovering the Patent Being Expired

The PTO Decision requests information as to why the Petitioner had not discovered that the patent was expired for six years, and questions whether the firm had contacted the PTO to determine the status of the patent. (See PTO Decision, p. 5.) Based on information and belief, the 7.5 maintenance fee was paid by facsimile within the open period for the payment. (See Maintenance Fee Facsimile.) Accordingly, there was no reason to expect that the payment would be denied, and therefore no reason to check to see if the payment was not accepted. It is respectfully submitted, therefore, that the PTO's assertion that it would be reasonable for the Petitioner to confirm the payment was accepted, is improper and that Petitioner's actions were consistent with the treatment of the maintenance as Petitioner's most important business.

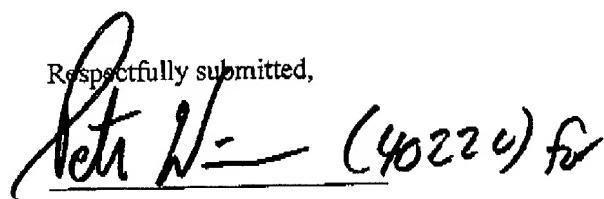
The undersigned hereby reaffirms earlier authorization and request to the Office to charge any outstanding petition fees, maintenance fees, and surcharges to Deposit Account No. 23-2185 necessary to restore this patent to granted status. This authorization and request to charge includes the \$400.00 petition fee required by 37 CFR 1.17(h). Authorization to charge

the 11.5 year maintenance fee to Deposit Account No. 23-2185 was originally provided on September 25, 2008.

For the reasons set forth above, Petitioner respectfully requests reconsideration of the Decision on Petition.

Dated: February 9, 2009

Respectfully submitted,



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